

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-550375-D2
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: William L. SIPE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1844

William L. SIPE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 1 June 1970, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for six months plus three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck utility on board SS WOLVERINE STATE under authority of the document above captioned, on or about 16 August 1968, Appellant assaulted and battered a fellow crew member, one Floyd Steed, aboard the vessel at Vung Tau, RVN.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of WOLVERINE STATE and the testimony of three witnesses.

There was no defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months outright plus three months on twelve months' probation.

The entire decision was served on 18 August 1970. Appeal was timely filed on 13 September 1970, and was perfected on 31 December 1970.

FINDINGS OF FACT

On 18 September 1968, Appellant was serving as a deck utility on board SS WOLVERINE STATE and acting under authority of his document while the ship was in the port of Vung Tau, RVN.

At about noon on that date, Floyd Steed, another deck utility, was seated at a table in the crew mess. Appellant entered the room and sat opposite Steed with whom he commenced an argument. Under no threat of the use of any force by Steed, Appellant threw a bowl of soup in Steed's face, breaking the bowl.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant takes four exceptions to the Examiner's decision. These will be discussed on the OPINION below.

APPEARANCE: Dearman, David and Wanzong, Houston, Texas, by Gary F. Wanzong, Esq.

OPINION

I

Appellant's first exception is that the evidence does not support the Examiner's finding that there was an "unprovoked" assault and battery. He bases this on a theory that there must have been an intense disagreement between him and Steed because of the violence implicit in language which he himself is quoted as having used. I can agree that Appellant's vehemence is demonstrated in his statement that if he had his way he "would get all of Group 2 [union members] off the ship."

My findings, however, are based on the fact that there is not a shred of evidence that there was a show of or threat of force from Steed. No matter what language might have been exchanged between the two men, Appellant was not acting in self-defense when he threw the bowl in Steed's face.

II

The second exception is that the evidence does not support the Examiner's finding that Appellant was loud, belligerent, and argumentative with others and was disturbing the mess. There is ample evidence in the testimony of Steed and two eyewitnesses that Appellant conducted himself as found; indeed the very language referred to in the first exception is certainly belligerent and argumentative. The matter is irrelevant, however. If Appellant had been absolutely quiet and Steed had been argumentative, there would still have been no sufficient provocation for Appellant's physical acts.

III

The third exception is to the Examiner's findings that

Appellant was to some degree under the influence of intoxicants. There was evidence that Appellant had been drinking ashore that morning and that at least one companion had difficulty in persuading him to return to the ship. From all the evidence there is a reasonable inference leading to the Examiner's finding; but I have not bothered to repeat it in my findings above. The matter is irrelevant. If Appellant could prove that he had not had a drink for a week, there would be no reason to disturb the finding that he threw the bowl of soup in Steed's face.

IV

Appellant finally complains that the order is too severe.

The order in the instant case could easily have been more severe without requiring mitigation. There is absolutely nothing in the record to persuade me that the present order should not be fully upheld.

He points to the circumstances that:

- (1) no weapon was used;
- (2) no serious injury was involved;
- (3) he and Steed got along well both before and after the incident;
- (4) the master did not find the incident serious enough to cause him to read his official log book entry to Appellant;
- (5) it is difficult for a seaman not to get into minor trouble; and
- (6) his retirement will be delayed if the suspension order is made effective.

Appellant at the same time acknowledges that over the years he has been "charged with several cases involving misconduct" and that "the defense of assault and battery is a serious offense."

The Examiner, on his own motion and without the benefit of Appellant's appearance and argument, has already extended to Appellant all the considerations that could possibly be given him, probably even more than the record of hearing justifies. The table of average orders at 46 CFR 137.20-165 lists for a first offense of assault and battery a flat six month suspension with no probation. The Examiner here was forced to invoke a three month suspension

because Appellant's offense was a violation of a previously ordered probation. The Examiner thereupon halved the six months listed in the table to three, necessarily adding it to the three previously ordered, and placed the rest on probation.

ORDER

The order of the Examiner dated at San Francisco, California, on 1 June 1970, is AFFIRMED.

T.R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 17th day of June 1971.

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